UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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| BARBARA A. IZZARELLI | : | |
| v. | : | CIV. NO. 3:99CV2238 (AHN) |
| R.J. REYNOLDS TOBACCO CO: | : | |

RULING ON MOTION FOR DETERMINATION

Pending is plaintiff‹s Motion for Determination of Sufficiency of Responses to Requests to Admit **[Doc. #60]**. Oral argument was held on November 24, 2003. After the November hearing, this motion was held in abeyance while plaintiff served revised requests to admit. A hearing on the revised requests was held on February 23, 2004. The parties submitted position letters to the Court dated December 31, 2003 and January 13, 2004. Plaintiff requests that the Court determine the sufficiency of Reynold's responses to thirty-five (35) requests to admit.

Purpose of Requests For Admission

An important purpose for requests for admission, pursuant to Fed. R. Civ. P. 36(a), "is to reduce the cost of litigation by narrowing the scope of disputed issues, facilitating the succinct presentation of cases to the trier of fact, and eliminating the

necessity of proving undisputed facts." Thalheim v. Eberheim, 124 F.R.D. 34, 35 (D. Conn. 1988) (citations omitted).

Requests 19-20 and 22-34

Reynolds states that it "admitted Requests 19-20 and 22-34 without any qualifications." [Reynolds Let. 1/13/04 at 2]. The Court deems these requests admitted. Defendant will submit revised responses stating that requests 19-20 and 22-34 are "admitted" within ten (10) days.

Requests 17 and 18

The Court deems these requests admitted. Defendant will submit revised responses stating that requests 17 and 18 are "admitted" within ten days.

Requests 1-16, 21 and 35

"Admitted or Denied"

"A party may in good faith qualify its answer or deny only part of a requested matter, but it must state specifically what part of the request is true, and deny only the remainder." 7 James Wm. Moore, Moore's Federal Practice §36.11[5](a) (3d Ed. 2003); cf. Thalheim, 124 F.R.D. at 38 (defendant's unqualified denials insufficient to meet substance of requests at issue and not provided in good faith). "When a request is denied, the court must consider: (1) whether the denial fairly meets the substance of the request; (2) whether good faith requires that the denial be qualified; and (3)

whether any "qualification" which has been supplied is a good faith qualification." Thalheim, 124 F.R.D. at 35 (emphasis in original). Judge Smith provided further guidance in Thalheim stating,

> Though qualification may be required where a request contains assertions which are only partially correct, a reviewing court should not permit a responding party to undermine the efficacy of the rule by crediting disingenuous, hair-splitting distinctions whose unarticulated goal is unfairly to burden an opposing party. Nor should a reviewing court permit a responding party to frustrate the rule by initially providing inadequate responses, forcing the requesting party to file a motion and costly memoranda, and only then coming forward with "amended answers" that easily could have been supplied in the first instance.

124 at 35-36 (emphasis in original, citations omitted).

Requests are Premature

As set forth above, defendant must make a good faith effort to specify what part of the request is true, and deny only the remainder. Where appropriate, defendant may respond in good faith that "despite reasonable inquiry the information known or readily obtainable by the defendant is insufficient to enable it to admit or deny." Fed. R. Civ. P. 36(a)Defendant should consider plaintiff's request that if "defendant has already confirmed that Mrs. Izzarelli developed larynx cancer, and that cigarette smoking was a substantial factor in causing the cancer, it should so admit and avoid the need and cost of experts on this issue." Pl. Let. 12/31/03 at 3.

Objections

Courts have rejected objections to requests to admit based on the following contentions.

> * That the requesting party has the burden of proof on the matter requested
> * That the requested matter consists of facts within the knowledge of the requesting party
>
> * That the requests cover many of the issues in the case, or the entire case
> * That the requested matter constitutes a genuine issue for trial or that the request goes to a disputed matter presenting a genuine issue for trial
> * That the request related to opinions of fact or the application of law to fact
> * That the responding party lacks personal knowledge, if the information is obtainable on reasonable inquiry.

7 Moore's Federal Practice § 36.11[5][c]. Defendant will certainly recognize that it made many of these objections rejected by other courts.

With these standards in mind, this Court rules as follows.

"Larynx Cancer"

Defendant's objection that the subject matter is improper for a request for admission is overruled. Defendant's objection that "plaintiff failed to limit the scope of this request to a particular type of larynx cancer" is also overruled. The Court finds plaintiff's request appropriately broad. As stated at oral argument, if defendant answers "no" to all forms of larynx cancer, there would appear to be no purpose asking a follow up question on a particular

form of larynx cancer.

"Cause"

"Cause" is defined in this context by plaintiff as "bringing about or producing an effect, result, or consequence." The American Heritage Dictionary (2d Ed. 1985). "[R]equests for admission are used to establish admission of facts about which there is no real dispute." 7 Moore's Federal Practice at §36.02[1]. Defendant will consider this definition in responding to the requests to admit.

"Substantial Factor"

Plaintiff states that the use of the term "substantial factor" is derived from the Connecticut Jury Instructions as follows, "[n]egligence is a proximate cause of an injury if it was a substantial factor in bringing the injury about." Section 2-31 of the Connecticut Judicial Branch Civil Jury Instructions. Defendants argue that this definition is inadequate stating, "it is far from clear what plaintiff intended by this definition, what is clear is that plaintiff's definition would not provide a jury with any better understanding of what plaintiff intended." [Def. Let. 1/13/04 at 4]. The Court disagrees.

Tesler v. Johnson, 23 Conn. App. 536, 583 A.2d 133 (1990), cert. denied, 217 Conn. 806 (1991), a case relied on by defendant, is readily distinguishable. In that case, the defendant claimed that the trial court failed to explain the concept of proximate cause, not

that the court failed to provide a definition for the term "substantial factor."

The Connecticut Supreme Court found that "[t]he meaning of the term 'substantial factor' is so clear as to need no expository definition . . . . Indeed, it is doubtful if the expression is susceptible of definition more understandable than the simple and familiar words it employs." (Internal quotation marks omitted.) Mather v. Griffin Hospital, 207 Conn. 125, 130 (1988), (quoting Connellan v. Coffey, 122 Conn. 136, 141 (1936), and Pilon v. Alderman, 112 Conn. 300, 301-302 (1930)); see Phelps v. Lankes, 74 Conn. App. 597, 606-07 (2003) (distinguishing Tesler and relying on Mather).

Accordingly, defendant will provide new responses to Requests No. 1-16, 21 and 35 within ten (10) days.

CONCLUSION

Accordingly, plaintiff‹s Motion for Determination of Sufficiency of Responses to Requests to Admit **[Doc. #60]** is **GRANTED** in accordance with this ruling. Defendant will file responses within ten (10) days consistent with Fed. R. Civ. P. 36(a).

Defendant’s current responses to requests 1-15 do not conform with Fed. R. Civ. P. 36(a). As such they are improper. Defendant should admit or deny the requests as posed, or affirm that "despite

reasonable inquiry the information known or readily obtainable by the defendant is insufficient to enable it to admit or deny." Fed. R. Civ. P. 36(a). Excess verbiage will be stricken as nonresponsive. Thalheim, 124 F.R.D. at 35. Requests to admit "framed in the negative" will be answered.

This is not a recommended ruling. This is a discovery ruling and order which is reviewable pursuant to the "clearly erroneous" statutory standard of review. 28 U.S.C. § 636 (b)(1)(A); Fed. R. Civ. P. 6(a), 6(e) and 72(a); and Rule 2 of the Local Rules for United States Magistrate Judges. As such, it is an order of the Court unless reversed or modified by the

district judge upon motion timely made.

SO ORDERED at Bridgeport this 12th day of March 2004

_/s/_____
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE